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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/716,306	11/18/2003	Chia Yung Cheng	2003B123	6939
23455	7590	05/30/2006	EXAMINER	
EXXONMOBIL CHEMICAL COMPANY 5200 BAYWAY DRIVE P.O. BOX 2149 BAYTOWN, TX 77522-2149			TORRES VELAZQUEZ, NORCA LIZ	
			ART UNIT	PAPER NUMBER
			1771	

DATE MAILED: 05/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/716,306	Applicant(s) CHENG ET AL.	
	Examiner Norca L. Torres-Velazquez	Art Unit 1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 20 March 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-115 is/are pending in the application.
- 4a) Of the above claim(s) 72-88 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-71 and 89-115 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Response to Arguments*

1. Applicant's arguments filed March 20, 2006 have been fully considered but they are not persuasive.

a. Applicants argue that a person of ordinary skill in the art, when presented with the Timmons reference, would not use the materials described in Datta in conjunction with the teachings of Timmons to achieve the purposes of the claimed invention, namely creating a non-woven fabric having elastic properties. Further, that the Datta reference does not teach, disclose, or suggest use of the blends described to make fibers or fabrics at any point in the specification or claims.

It is noted herein that the present invention is directed to a nonwoven fabric made of a specific composition that is met by the prior art of record, therefore, must meet the argued elastic properties. The burden is upon Applicant to prove otherwise. *In re Fitzgerald* 205 USPQ 594. With regards to the combination of Timmons and Datta, it is noted that both references are directed to compositions from propylene based resins with narrow molecular weight distribution and while Datta is silent to the particular application of their composition, it discloses that their blends manifest unexpected compability characteristics, increased tensile strength and improved process characteristics. It is the Examiner's position that those characteristics are desirable for compositions used in the production of fibers and fabrics.

Therefore, the rejection of the claims over the combination of TIMMONS and DATTA et al. is maintained herein.

***Terminal Disclaimer***

2. The terminal disclaimers filed on March 20, 2006 disclaiming the terminal portion of any patent granted on this application, which would extend beyond the expiration date of US 6,342,565 and of application no. 10/969,489 has been reviewed and is NOT accepted.

The person who signed the terminal disclaimer is not recognized as an officer of the assignee, and he/she has not been established as being authorized to act on behalf of the assignee. See MPEP § 324.

3. An attorney or agent, not of record, is not authorized to sign a terminal disclaimer in the capacity as an attorney or agent acting in a representative capacity as provided by 37 CFR 1.34 (a). See 37 CFR 1.321(b) and/or (c).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-71 and 89-112 are rejected under 35 U.S.C. 103(a) as being unpatentable over TIMMONS et al. (EP 0462574 B2) in view of DATTA et al. (EP 1223191 A1) as stated in previous action.

TIMMONS et al. teaches nonwoven fabric laminates useful for applications such as towels, industrial garments, medical garments, among others. [0002] The reference teaches the use of a polypropylene resin in the form of a reactor granule having a starting molecular weight distribution of 4.0 to 4.5 Mw/Mn and a melt flow rate of from 1000 to 3000 gms/10 min. [0010]

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The reference teaches spunbonding and meltblowing in the production of the filaments and the construction of laminates. (Refer to [0017]-[0021])

TIMMONS et al. fails to teach a composition that includes the first and second components of the present invention.

DATTA et al. discloses thermoplastic polymer blend compositions comprising from about 35% to about 85% isotactic polypropylene and from about 30% to about 70% of an ethylene and propylene copolymer. The reference teaches increased tensile strength from the blends. (Abstract)

The reference teaches that the first polymer component, i.e. the polypropylene polymer component may be homopolypropylene, or copolymers of propylene, or some blends thereof. The first polymer component of the present invention is predominately crystalline, i.e., it has a melting point generally greater than about 110 °C. [0017] The second polymer component of the polymer blend compositions comprises a copolymer of propylene and another alpha-olefin having less than 6 carbon atoms, preferably ethylene. The second polymer component comprises a random copolymer having a narrow compositional distribution. [0021] The copolymer second component has a melting point between about 105°C and 25°C. [0023] The second polymer component preferably has a narrow molecular weight distribution (MWD) between about 1.8 to about 5.0. [0024] Table 1, shows heat of fusion for the second polymer component that range from 7.8 to 71.9 J/g. (Refer to page 10) The reference further teaches compositions with about 4 wt% to about 25 wt% ethylene in the second polymer component. [0009] The reference also teaches polymerization methods that include Ziegler-Natta catalyst and metallocene catalyst system. [00020]

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It is the Examiner's interpretation that the first polymer component of DATTA et al. equates to the second component of the present invention and the second polymer component of the reference equates to the first component of the present invention.

Since both references are directed to materials from propylene based resins with narrow molecular weight distribution, the purpose disclosed by DATTA et al. would have been recognized in the pertinent art of TIMMONS.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify resin composition of TIMMONS and provide it with the blend composition of DATTA et al. with the motivation of producing a material with increased tensile strength and improved process characteristics as disclosed by DATTA et al. (Abstract)

Although the TIMMONS and DATTA et al. references do not explicitly teach the claimed permanent set and elongation it is reasonable to presume that this property is inherent to the nonwoven fabric from the combination of TIMMONS and DATTA et al. Support for said presumption is found in the use of like materials (i.e. similar composition, nonwoven made by similar processes). The burden is upon Applicant to prove otherwise. *In re Fitzgerald* 205 USPQ 594. In addition, the presently claimed properties of permanent set and elongation would obviously have been present one the product from the combination of TIMMONS and DATTA is provided. Note *In re Best*, 195 USPQ at 433, footnote 4 (CCPA 1977) as to the providing of this rejection made above under 35 USC 102. Reliance upon inherency is not improper even though rejection is based on Section 103 instead of Section 102. *In re Skoner, et al.* (CCPA) 186 USPQ 80

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6. Claims 113-115 are rejected under 35 U.S.C. 103(a) as being unpatentable over TIMMONS and DATTA et al. as applied to claim 1 above, and further in view of ARATAKE et al. (US 5,910,362) as stated in previous action.

TIMMONS and DATTA et al. are silent to staple fibers.

ARATAKE et al. relates to a polyolefin fiber and a nonwoven fabric produced by using the fiber. It teaches using such fabric in applications such as operating gowns, medical supplies such as paper diapers and sanitary napkins, among others. (Col. 1, lines 5-20) The reference teaches melt spinning propylene homopolymer polymerized by using a Ziegler-Natta catalyst, teaches crimping the filaments and cutting them into staple fibers at a length of 38 mm. (Refer to Col. 6, lines 31-40)

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to use staple fibers in the production of the nonwoven fabric motivated by the desire of producing fabrics having a high strength and excellent hand feeling as taught by ARATAKE et al. (Abstract)

### ***Double Patenting***

7. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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8. Claims 1-71 and 89-115 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-19 of copending Application No. 10/969,489. Although the conflicting claims are not identical, they are not patentably distinct from each other because both claims claim a nonwoven fabric made from a blend or composition comprising the same components.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

9. Claims 1-71 and 89-115 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-10 of U.S. Patent No. 6,342,565. Although the conflicting claims are not identical, they are not patentably distinct from each other because the '565 patent claims a nonwoven made from a blend with similar components to those claimed in the present invention.

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.



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11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Norca L. Torres-Velazquez whose telephone number is 571-272-1484. The examiner can normally be reached on Monday-Thursday 8:00-5:00 pm and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Norca L. Torres-Velazquez  
Primary Examiner  
Art Unit 1771

May 23, 2006